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March 24, 2004

VIA HAND DELIVERY

Ms. Deborah Taylor Tate, Chairman
TENNESSEE REGULATORY AUTHORITY
460 James Robertson Parkway
Nashville, Tennessee 37243

**Re: *Tennessee Coalition of Rural Incumbent Telephone Companies and
Cooperatives Request for Suspension of Wireless to Wireless Number
Portability Obligations Pursuant to Section 251(f)(2) of the Communications
Act of 1934, as Amended; Docket No. 03-00633***

Dear Chairman Tate:

Enclosed for filing in the above-referenced docket are the original and thirteen copies of the Amended Petition for Suspension filed on behalf of Petitioner Tennessee Coalition of Rural Incumbent Telephone Companies and Cooperatives.

Should you have any questions with respect to this filing, please do not hesitate to contact me at the number shown above.

Thanking you in advance for your assistance with this matter, I am

Very truly yours,



R. Dale Grimes

RDG/tn
Enclosures

J. Richard Collier, Esq. (via hand delivery)
Timothy C. Phillips, Esq. (via hand delivery)

In the Matter of

**Tennessee Coalition of Rural
Incumbent Telephone Companies
And Cooperatives
Request for Suspension of Wireline to
To Wireless Number Portability Obligations
Pursuant to Section 251(f)(2) of the
Communications Act of 1934, as Amended**

AMENDED PETITION FOR SUSPENSION

Pursuant to Section 251(f)(2) of the Communications Act of 1934, as amended (the "Act"), the Tennessee Coalition of Incumbent Rural Telephone Companies and Cooperatives (individually "Petitioner" or "Independent" and collectively "Petitioners" or "Independents"),¹ by counsel, hereby submit this Amended Petition and respectfully request that the Tennessee Regulatory Authority ("TRA") suspend the requirement otherwise imposed on each Company to deploy number portability ("LNP").

Pursuant to orders of the Federal Communications Commission (“FCC”), Petitioners are currently required to provide LNP by May 24, 2004. For the reasons stated in this Petition, Petitioners respectfully request that they be granted a suspension, first, pending this proceeding and, second, a further suspension until the later of (1) the dates for each Petitioner listed on Attachment A as their projected date for LNP technical capacity, (2) six months after the date by which the applicable FCC Orders (November 10, 2003 and January 16, 2004, the “*Intermodal Orders*”) are no longer subject to appeal, and (3) six months after the date by which the TRA has

¹ Attachment A sets forth the names of each Independent

provided direction to the Petitioners on the rating and routing issues raised in this Petition and in the CMRS Arbitration, Docket No. 03-00585, pending before the TRA.

Absent such relief, the Petitioners respectfully submit that the provision of number portability in the areas served by them will have significant adverse economic impact on telecommunications users in the areas served by the Independents; the imposition of this requirement is economically burdensome; and the implementation of number portability as required by the FCC is not technically feasible. Moreover, the grant of the requested suspension will be consistent with the public interest, convenience and necessity.

Since the original Petition in this matter on December 11, 2003, the FCC has amended its November 10, 2003 decision addressing generally applicable requirements for wireline-to-wireless portability ("intermodal portability"), that established a November 24, 2003 deadline for support of number portability in the top 100 Metropolitan Statistical Areas ("MSAs"), and a May 24, 2004 deadline in all other areas.² Specifically, the *November 10 Intermodal Order* was amended on January 16, 2004.

As a result the FCC's most recent action, local exchange carriers ("LECs") with less than two percent (2%) of the nations' access lines and that operate within the top MSAs that had not received a request for local number porting from a wireline carrier prior to May 24, 2003 or from a wireless carrier that has a point of interconnection or numbering resources in the rate center where the customer's wireline number is provisioned will have until May 24, 2004 to comply with the FCC's intermodal porting requirements.³ The *2% Order* recognized the need for an

² See *In the Matter of Telephone Number Portability, CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues, Memorandum, Opinion and Order and Further Notice of Proposed Rulemaking*, CC Docket No. 95-116, FCC 03-284, released Nov. 10, 2003 ("*November 10 Intermodal Order*")

³ See *In the Matter of Telephone Number Portability, CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues, Order*, CC Docket No. 95-116, FCC 04-12, released January 16, 2004 (the "*2% Order*").

extension of intermodal portability and the inherent burdens it imposes on 2% LECs in MSAs. Each of the Petitioners falls within the parameters of the 2% Order.

Nonetheless, as shown in Attachment A, most of the Petitioners need additional time to complete the tasks that are needed to become technically capable to implement LNP. However, once technical capacity is achieved, technical feasibility will not have been reached. Technical infeasibility still exists with respect to attempting to comply with the FCC's apparent intermodal porting directives due to the lack of the necessary interconnection arrangements required to make sure that intermodal porting *in conjunction with the exchange of end user traffic* is achieved.

I. The Act Properly Designates the TRA as the Appropriate Decision-Making Body to Determine Whether Number Portability or Any Other Section 251(b) or (c) Interconnection Requirement is Consistent with the Public Interest in the Areas Served by the Independents.

In Section 251(f)(2) of the Act, Congress recognized that it is appropriate to vest in the TRA the right to suspend and modify the interconnection obligations of the Petitioners set forth in Section 251(b), including the requirement to support number portability. Congress fully understood that the implementation of many of the Section 251 interconnection requirements, including number portability, may not be technically feasible, economically rational, or in the *overall public interest* in areas of the nation such as those served by the Independents and other smaller carriers.

Each Petitioner meets the threshold criteria: "A local exchange carrier with fewer than two percent of the Nation's subscriber lines installed in the aggregate nationwide may petition a state commission for a suspension or modification." 47 U.S.C. §251(f)(2). As of December 2002, approximately 188 million local telephone lines were in service nationwide. See "Federal Communications Commission Releases Study on Telephone Trends," FCC News Release

(released Aug. 7, 2003). Accordingly, LECs serving fewer than 3,760,000 access lines qualify for suspension considerations pursuant to the Act. Each Independent serves far fewer than this number of customer lines

Congress' incorporation of the Section 251(f)(2) suspension mechanism reflects the general understanding that the State Commissions are the appropriate authority to make this determination in their own respective States. The Act establishes a very specific framework for the consideration of a request for suspension of a Section 251 interconnection obligation. The TRA is vested with the authority to suspend or modify the interconnection obligations found in Section 251(b) of the Act for LECs "with fewer than two percent of the Nation's subscriber lines installed in the aggregate nationwide" if the TRA determines that such suspension or modification:

- (A) is necessary –
 - (i) to avoid a significant adverse economic impact on users of telecommunications services generally;
 - (ii) to avoid imposing a requirement that is unduly economically burdensome; or
 - (iii) to avoid imposing a requirement that is technically infeasible; and
- (B) is consistent with the public interest, convenience, and necessity.

47 U.S.C. §251(f)(2).

Congress fully understood that the implementation of many of the Section 251 interconnection requirements, including number portability, may not be technically feasible, economically rational, or in the overall public interest. The Section 251(f)(2) mechanism ensures that State Commissions have the opportunity to determine whether number portability, or any other Section 251(b) requirement, is appropriate in areas of the nation served by the Independents.

The *Intermodal Orders* do not preempt the TRA's right and obligation to protect the overall public interest of the telecommunications users served by the Independents.⁴ In fact, the FCC has previously recognized its anticipation that the service areas of small carriers, like the Petitioners, would be subject to Section 251(f)(2) suspensions pursuant to the consideration by State Commissions. As set forth herein, the Petitioners are concerned that number portability should not be implemented in their respective service areas in a manner that will harm the overall public interest. In response to similar concerns, the FCC has cited Section 251(f)(2) and noted that if State Commissions exercise their authority to suspend, "eligible LECs will have sufficient time to obtain any appropriate Section 251(f)(2) relief as provided by the statute."⁵ Accordingly, the Petitioners request that the TRA suspend the requirement to provide number portability in their service areas according to the relief requested herein.

II. Immediate Suspension of the Enforcement of Number Portability Requirements with Respect to the Petitioners During Pendency of this Proceeding is Both Justified and in the Public Interest. The Compliance Deadlines Established by the FCC Intermodal Order are not Consistent with the Operations and Characteristics of the Petitioners.

The *Intermodal Order*, as modified by the *2% Order*, now requires the Petitioners and other wireline carriers that have received a *bona fide* request for number portability from a wireless provider to have the technical capability to support intermodal porting by May 24, 2004

⁴ Petitioners note that the FCC did purport to preempt the jurisdiction of the TRA and other state commissions with respect to state Commission oversight of interconnection agreements ("ICAs") with respect to requiring an ICA for intermodal porting. See *November 10 Intermodal Order* at para. 37. The assertion of preemption will undoubtedly become the subject of the now pending judicial review. The asserted preemption, however, did not extend to the TRA's rights to protect the public interest pursuant to Section 251(f)(2). In any event, the FCC specifically noted that "wireless providers need not enter Section 251 interconnection agreements solely for the purpose of porting numbers." *Id.* at para. 34 (emphasis added), see also *id.* at para. 35. As explained in Section IV, *infra*, the lack of the necessary terms and conditions governing the exchange of end user traffic between Petitioners and various wireless carriers demonstrates that an ICA is not required "solely" for intermodal porting. *Id.* at para. 34.

⁵ *In the Matter of Telephone Number Portability, First Memorandum Opinion and Order on Reconsideration*, 12 FCC Rcd 7236 (1997) ("Number Portability Reconsideration") at 7302-03 (1997)

regardless of whether that company operated within or outside the top 100 MSAs.⁶ The directives of the FCC's *Intermodal Order* still raise concerns for each of the Petitioners regarding the technical feasibility of compliance with that deadline. These concerns were not addressed by the *2% Order*. Accordingly, the Petitioners respectfully urge the TRA to suspend enforcement of the number portability requirements pending consideration of the Petition.

With foresight, Congress fully anticipated the need for State Commissions to suspend interconnection requirements on a temporary basis during the pendency of consideration of a Sec. 251(f)(2) suspension request. Congress specifically provided that the TRA may "suspend enforcement of the requirement or requirements to which the petition for suspension applies with respect to the petitioning carrier or carriers." 47 U.S.C. §251(f)(2). Petitioners' respectfully submit that the TRA's grant of a temporary suspension contemplated by the Act will serve the public interest.

The *Intermodal Order* and the *2% Order* each reflect FCC recognition that all carriers cannot implement intermodal porting. The *Intermodal Order* reflects the fact that the FCC understood that the Petitioners and other rural carriers should have a "transition period" to "help ensure a smooth transition" in the deployment of number portability in their service areas.

[F]or wireline carriers operating in areas outside of the 100 largest MSAs, we hereby waive, until May 24, 2004, the requirement that these carriers port numbers to wireless carriers that do not have a point of interconnection or numbering resources in the rate center where the customer's wireline number is provisioned. We find that this transition period will help ensure a smooth transition for carriers operating outside of the 100 largest MSAs and provide them with sufficient time to make necessary modifications to their systems.⁷

⁶ See *2% Order* at para 12

⁷ November 10 *Intermodal Order* at para 29

The FCC's intent to provide this transition was then confirmed in the *2% Order* when the FCC extended the intermodal porting compliance date for certain 2% carriers until May 24, 2004.⁸ While the *Intermodal Order* and the *2% Order* acknowledge the need for a transition period, these Orders do not provide a sufficient transition to meet the circumstances of the Petitioners. The Petitioners respectfully request that the TRA exercise its authority pursuant to Section 251(f)(2) of the Act to ensure that each Petitioner is provided with an adequate transition period that will truly serve the overall public interest of the Petitioners and their rural subscribers. The additional temporary suspension period sought by each Petitioner is warranted by the operational factual realities and network characteristics of the each petitioner.

In addition to the company-specific information provided herein, the Petitioners generally share many common circumstances with other rural carriers throughout the country that are far different than those common to larger carriers serving more urban areas in Tennessee and in other States. For example, unlike the larger LECs that are the predominant service providers in the top 100 MSAs, the Independents have not generally been required under the FCC's existing rules to deploy number porting capability. In the *2% Order*, this fact, and its impact, is acknowledged. The FCC recognized that smaller LECs like the Petitioners generally "had not received requests from other wireline carriers for wireline-to-wireline porting prior to May 24, 2003," resulting in the need for these smaller carriers to "acquire the hardware and software necessary to provided porting, make the necessary upgrades, and ensure that their upgraded networks work reliably and accurately."⁹ On this basis, the FCC found that "special

⁸ See *2% Order* at para 12

⁹ *Id* at para 8 (footnotes omitted).

circumstances” existed to extend the implementation date for all affected 2% carriers until May 24, 2004.¹⁰

The very same basis warrants additional suspension of the LNP requirements for many of the Petitioners. As the TRA is aware, the service areas served by the Petitioners (operations both inside and outside of the top 100 MSAs) have generally not been subjected to requests for number portability from Competitive Local Exchange Carriers. Accordingly, and consistent with the FCC's Rules and Regulations, the Petitioners have not generally deployed the hardware and software in their switches to support number portability in their operations either inside or outside of the top 100 MSAs. Attachment A is a list of each Petitioner's earliest date for LNP technical capacity due to, among other things, hardware and/or software availability and installation, testing and programming requirements, and database contracting arrangements.

Even for those Petitioners that have upgraded their switches to support basic technical aspects of porting, the existence of uncertainty, confusion and the continuing need for clarification with respect to the Petitioners' intermodal porting obligations has not been resolved by the FCC. Suspension is warranted to protect the public from the inevitable confusion that will occur in those instances where a number can be ported technically, but no routing arrangements have been made by the requesting carrier to ensure that calls to the ported number can be completed on a non-toll basis.

Accordingly, Petitioners request that the TRA suspend enforcement of intermodal number portability requirements while it addresses and resolves the issues raised in this proceeding. Grant of this request is consistent with the public interest. The temporary suspensions requested by the Petitioners will ensure that the unresolved issues can be addressed

¹⁰ See *id*

in a thoughtful and complete manner. Grant of an immediate suspension, consistent with Section 251(f)(2) of the Act will ensure that no party or consumer is inordinately burdened during the pendency of this proceeding.

III. Provision of Intermodal Number Portability by the Petitioners is Unduly Economically Burdensome and will Result in Significant Economic Harm to Users of Telecommunications Services.

Absent suspension of the Petitioners' FCC-imposed intermodal porting requirements, the implementation of local number portability will be unduly economically burdensome on the Independents and, ultimately, on the telecommunications users they serve.¹¹ In the face of significant uncertainty regarding the interpretation and even the legality of the *November 10 Intermodal Order*, the expenditure of limited resources is not justifiable.

Grant of the suspension requests described herein and in Attachment A would avoid imposing a requirement that is unduly economically burdensome. As a small telephone company that qualifies for the Section 251(f)(2) suspension relief contemplated by Congress, each Petitioner has a limited customer base over which to spread its network costs. These costs are significant and, to a substantial degree, uncertain because of the vague directives for intermodal porting provided by the FCC. The decision to incur these costs becomes even more difficult to justify when weighed against the few, if any, public benefits that may be gained by attempting to implement the capability to port numbers to the wireless provider.

The issue of suspension is not a simple question of whether it is always in the public interest to require a competitive interconnection obligation irrespective of the impact in a rural service area. Service 251(f)(2) exists because Congress recognized that balance of conflicting interests will be required in rural areas to ensure that universal service goals are fostered in the

¹¹ See 47 U.S.C. §251(f)(2)(A)(ii)

overall public interest. The very same need to balance competing interests was addressed previously by the FCC when it recognized that this requirement should not "burden rural LECs significantly without benefiting the public by increasing competition."¹² The Petitioners respectfully submit that the inquiry of a Section 215(f)(2) suspension proceeding goes beyond whether competition is fostered and requires consideration of whether any speculative benefits outweigh identified concerns and potential harm to the overall public interest. The *Intermodal Orders* do not displace the need for this underlying policy consideration. Instead, the issuance of the *Intermodal Orders* underscore the need for the TRA to determine whether the economic burden and the potential adverse economic ramifications for rural telecommunications users are outweighed by any speculative competitive public interest benefits. The Petitioners respectfully urge that the TRA should first gain experience and insight into the effectiveness of intermodal portability in the more robust urban markets of Tennessee before requiring the Petitioners to undertake the burden of portability deployment.¹³

The economic burden of deployment of LNP in rural markets served by the Independents is significant. The following paragraphs describe the specific costs of each Petitioner to comply with the FCC portability requirements.

Ardmore Telephone Company, Inc.: This Petitioner estimates its switch will need to be upgraded, and the estimated costs for that

¹² *Number Portability Reconsideration*, 12 FCC Rcd at 7298 99, 7301

¹³ The Petitioners note that the February 9, 2004 edition of *RCR* indicates that there has not been as much demand in wireline to wireless porting as the FCC anticipated. *Survey Finds Little Impact from LNP*, "RCR Wireless News, February 9, 2004 (posted 12:58 pm EST 2-9-04) RCR cites to a consumer survey report compiled by CFM Direct that found that very few telecommunications customers have switched their wireline phone numbers to wireless. The article quoted Barry Barnett, executive vice president of CFM Direct, as stating "Phone portability should have enticed more landline users to switch to wireless, and though the data we have doesn't look at pre-teens to teens, the owners of landline phones are primarily adults. We don't see adults making the shift." Further, *The Boston Globe* quotes Mark Lowenstein, Managing Director of Mobile Ecosystem, as stating "only around 250,000 to 300,000 Americans appear to have actually taken advantage of number portability so far." He noted that original estimates had been between 10 and 30 million of the 153 million nationwide wireless customers taking advantage of porting. Howe, Peter J., "Rocky Start for Number Portability," *The Boston Globe Online*, December 23, 2003.

upgrade will be \$100,000. This Petitioner has not yet quantified any additional administrative charges or costs for new contracts that will be required to do number portability.

Ben Lomand Rural Telephone Cooperative, Inc.: This Petitioner estimates that it will need to negotiate new contracts for NEUSTAR registration¹⁴ and Service Order Administration ("SOA")¹⁵ contracts with entities that provide this service such as VeriSign, Inc. or Sprint. Because these contracts are quantity based, a specific cost is difficult to estimate at this time. In addition, this Petitioner anticipates administrative changes that will be required in order to comply with its obligations related to NECA Tariff No. 4. Additional administrative changes would be needed to test the porting between the wireless and wireline companies and to handle the porting requirements. This Petitioner estimates those additional processes will require additional administrative costs related to new personnel of \$65,000 to \$70,000 per year.

Bledsoe Telephone Cooperative: This Petitioner estimates additional costs of LNP software of \$49,200, number pooling at \$4,000, and translations at \$25,000. This Petitioner has not yet quantified its certain additional administrative cost or its costs associated with new contracts.

CenturyTel of Adamsville, Inc., CenturyTel of Claiborne, Inc., CenturyTel of Ooltewah-Collegedale, Inc.: These Petitioners estimate additional software RTU costs for five switches of \$187,500 and an additional switch translation total cost of \$37,500. Further, there is an estimated additional \$59,254 that will be incurred related to annual LNP query cost for a five year contract with a third party vendor. Petitioners also estimate they may need to create an additional position to provide personnel for database administration. Thus, CenturyTel's total implementation cost is estimated to be a minimum of \$284,254 for the first year only.

Crockett Telephone Company, Inc., Peoples Telephone Company, and West Tennessee Telephone Company, Inc.: Each of these Petitioners estimate a switch upgrade cost of \$56,750 per company. The Petitioners, however, do not know at this time what the cost will be to program the billing systems to handle

¹⁴ NEUSTAR oversees the LNP database process systems and updates relevant LNP databases for call routing purposes

¹⁵ The SOA is the process that carriers must undertake to communicate to the LNP administrator (NEUSTAR) in order to update all relevant LNP databases for proper call processing and routing by "porting-out" and "porting-in" carriers

LNP, although it has identified the need for several program changes required to accommodate intermodal porting. These Petitioners also are not certain what the cost will be of the additional contracts that that will be necessitated by the LNP changes. These Petitioners anticipate additional costs for personnel training; revisions of policy and procedural manuals; new programming to update subscriber billing, Carrier Access Billing ("CABS"), cable plant and other databases; and administrative costs for the new contracts and other unknown items. These costs have not yet been quantified by these Petitioners.

Dekalb Telephone Cooperative, Inc.: This Petitioner has a quote of \$169,600 for Nortel for software and hardware to update their switch to make it local number portability ("LNP") capable. An additional \$25,000 for testing training and setup for personnel will be needed. The Petitioner also anticipates additional costs somewhere between \$10,000 and \$15,000 for computer software that will have an LNP module. Petitioner further estimates that it will incur an additional monthly cost of \$1,250 once it negotiates a contract with NEUSTAR regarding portability issues. There will also be a non-recurring transaction fee of \$1.44 for each ported number in addition to other monthly costs. Regarding administrative functions, this Petitioner estimates \$500 in non-recurring fees to set up each LNP exchange, additional costs for 911 administrative functions, CABS administrative functions, and at least an additional 20 minutes in service time that will be required for each order requesting portability services. One additional employee will be hired to perform the extra administrative tasks associated with LNP, and that will require a fully loaded labor cost of \$56,250 per year. These charges equate to a total annual non-recurring cost to implement LNP of \$266,350. As stated above, there will be additional recurring costs that are not known at this time because such costs are volume sensitive and based on transactions.

Highland Telephone Cooperative, Inc.: This Petitioner estimates software charges of \$168,000 for purchase and installation and an additional \$7,000 for training and startup. Those are for Nortel switches. The company is aware of an estimated additional \$25,000 that will be required to setup for portability requirements with its software system, Stellarrad. Thus, to even begin complying with the portability requirements, this Petitioner will incur a startup cost of \$193,000. This does not include other ongoing costs that will follow the implementation of portability requirements, and does not include additional administrative costs.

Loretto Telephone Company, Inc.: This Petitioner estimates new billing software will cost approximately \$12,000. There will be estimated costs of \$720 for installation and testing of LNP features and enhancements, along with query expenses for five years of \$45,154.53. Training costs are estimated to be \$1,996, and customer education expenses will be \$6,900. There will be an estimated \$10,000 for administrative expenses. Service Order Administration Charges will be \$20,950 over five years. Thus, the total estimated cost to implement LNP over five years for this Petitioner is \$100,720.53.

Millington Telephone Company: This Petitioner estimates switch software upgrades totaling \$219,949 with additional estimated charges for queries of \$57,000 in year one, \$63,000 in year two, \$79,000 in year three, \$87,000 in year four and \$103,000 in year five, totaling \$389,000 for the first five years. The portability obligations will require the Petitioner to incur charges for labor and materials and non-recurring software and NPAC charges estimated to be at \$16,000 for year one and SOA and maintenance charges for each year thereafter of \$2,500 per year. The Petitioner has not yet been able to quantify the cost of other new contracts and the additional administrative obligations to implement LNP. Thus, the total estimated costs at this time, and not all costs have been estimated, totals \$651,949 for the first five years of implementing portability requirements.

North Central Telephone Cooperative, Inc.: This petitioner has spent approximately \$200,760 to date in LNP software costs. Approximately \$52,000 more in cost is anticipated to complete LNP installation with approximately \$800 in monthly costs.

Humphreys County Telephone Company, Tellico Telephone Company, Inc., and Tennessee Telephone Company: Tennessee Telephone estimates a cost of \$150,669 to make its remaining switching facilities LNP capable. It will also incur an additional \$169,948 if and when it is required to participate in number pooling. Tellico estimates its costs for equipment and software will be \$36,235, and Humphreys County, which has benefited from the efforts of Mt. Juliet in updating its switches, estimates a cost of \$5,000 for additional software and equipment. Other charges will be incurred by each of these companies but are not able to be quantified at the present time. These additional charges will come from charges from NEUSTAR based on the cumulative volume levels of porting events, call routing charges based on the volume of queries, administrative costs for LNP project management, testing carriers, order processing, internal

procedure development and training of customer service representatives, technicians and administrative staff.

Twin Lakes Telephone Cooperative Corporation: This Petitioner estimates that, for its Nortel switches, it will incur LNP-related software charges of \$134,080 for purchase and installation and an additional \$7,000 for training and startup. For its Siemens DCO switches, this Petitioner will need to upgrade those switches at an estimated cost of \$370,680 for purchase, installation, training, and startup. The Siemens EWSD switch will require estimated costs of \$120,600 for purchase, installation, training and startup. This Petitioner is aware of an estimated additional \$20,000 that will be required to setup for portability requirements with its software system, CommSoft. Thus, to even begin complying with the portability requirements, this Petitioner will incur a startup cost of \$652,360. This does not include other ongoing costs that will follow the implementation of portability requirements, and does not include additional administrative costs.

United Telephone Company: United has already incurred \$837,211 to purchase and install equipment and software to comply with portability requirements. It will incur additional fees for contracts with NEUSTAR, BellSouth for STP links, and NECA to update the LERG. The known costs of these contracts are \$100 per sheet for NECA, and \$1,229.70 paid to NEUSTAR in 2003. The costs associated with the BellSouth contract are presently unknown. Additional administrative costs through January 2004 were \$3,431 for the administrative time devoted to portability services. In addition, there is an estimated annual recurring cost of participation of \$3,000. Thus, United's estimated known costs for its implementation of portability requirements totals \$843,642 for the first year.

Yorkville Telephone Cooperative: This Petitioner anticipates spending at least \$5,920 for database engineering for the LNP compliant switches it already has. It estimates an additional yearly contract fee of \$1,000 with its SS7 network provider, TSI. There will be additional administrative costs incurred with training a current staff member to learn the functions and processes related to LNP. This Petitioner estimates its total cost will be \$30,000 to implement LNP.

As indicated above, Petitioners note that many of these costs cannot be quantified at this time and are in some cases dependent on volume, which is also unknown at this time. The Petitioners respectfully submit that this uncertainty as to the full cost of implementation

underscores the need for a suspension until more facts are known. Regardless, the combination of the known and unknown cost elements demonstrate the substantial adverse economic harm and undue economic burden that will affect the Petitioners and their respective users if the Petitioners' intermodal porting obligations are not suspended.

A suspension is also prudent to the extent that the Petitioners have not yet incurred these costs. Given the uncertainty of the *Intermodal Orders* in that they are subject to an emergency motion for expedited review in *National Telecommunications Cooperative Association vs. FCC*, Case No. 03-1443, D.C. Circuit Court of Appeals, it is wise to suspend the obligation of further LNP efforts that may, in the end, be a waste of time and money if the *Intermodal Orders* are modified on appeal.

Requiring an Independent to recover these costs from its limited customer base, or to forego cost recovery altogether, is counterintuitive and contrary to the fundamental concept that the beneficiary of a service should bear the cost of the service. Unlike the more densely populated urban markets where the switch hardware and software upgrade costs can be amortized over a larger customer base, the switches of the Independents generally serve the less densely populated rural areas of Tennessee. There are fewer customers per switch among which to amortize the costs of the upgrades or switch replacements. In the event an Independent deploys LNP and only a few customers decide to port their numbers in the rural market, the remaining customers bear the costs that were required for the benefit of very few. Alternatively, if a large number of rural customers elect to port their number, the few remaining customers are left to shoulder the cost recovery burden. Under either scenario, the beneficiaries or users of the porting capability pay none of the costs.

In addition, there exist unresolved questions regarding the financial responsibility for significant costs that will result from implementation of those aspects of the *November 10 Intermodal Order* regarding the routing and rating of calls to ported numbers. Specifically, the *November 10 Intermodal Order* requires that "calls to the ported number will continue to be rated in the same fashion as they were prior to the port."¹⁶ As discussed below, the *November 10 Intermodal Order* does not address the network and operational realities regarding the networks of the Independents and the connectivity of wireless carriers to those networks.¹⁷

With respect to the economic ramifications and concerns arising in the absence of the requested suspension, the FCC requirements may obligate the Independents to incur additional financial burden to transport calls to ported numbers to interconnection points beyond the network boundaries of the Independent. As the TRA is aware, the local exchange transport capability of each Independent is confined by the physical limitations of its existing network. Yet, under the *November 10 Intermodal Order*, when a wireless carrier has not deployed facilities to meet a wireline carrier at its service area boundary, the facilities of a third party are required to transport calls to a number ported to the wireless carrier. No third party transport provider is likely to provide this transport service for free; additional costs will be incurred. The fact that there is no direction from the FCC as to the recovery of these costs¹⁸ further exacerbates the economic concerns of the Petitioners and, in fact, supports the request for suspension.

These significant unresolved issues raise the specter that the associated costs of transport may ultimately be imposed on the Petitioners and their ratepayers, thereby adding to the concerns regarding the adverse impact and economic burden that will result in the absence of a

¹⁶ *November 10 Intermodal Order* at para 28.

¹⁷ See, Section IV, *infra*, addressing the technical infeasibility of these aspects of the FCC's requirements with respect to network operations in the areas served by the Petitioners

grant of the requested suspension. To the extent such costs are incurred, rural Independent ratepayers are exposed to additional costs to benefit those few, if any customers that would port their numbers to a wireless provider.

The Petitioners respectfully submit that the consideration of the overall public interest demands that the TRA give meaningful attention to the LNP cost burdens and cost recovery dilemma in the service areas of the Independents. The Independents respectfully urge the TRA to ensure that efforts to foster competition for the sake of competition are not undertaken to the detriment of universal service in the State's rural areas. The Petitioners and their rural customers will incur economic harm and undue burden if the Petitioners are required to expend significant resources to deploy LNP in the absence of thorough and meaningful consideration of a cost benefit analysis and appropriate cost recovery mechanisms that properly reflect the bearing of costs by those who benefit. Accordingly, the overall public interest will be served by grant of the requested suspension in accordance with Section 251(f)(2) of the Act.

IV. Provision of Intermodal Number Portability by the Petitioners is Not Technically Feasible.

The provision of intermodal portability in accordance with the *November 10 Intermodal Order* is not technically feasible in the areas served by the Independents. In Sections II and III, *supra*, the Petitioners addressed the lack of clarity, and the resulting technical infeasibility and economic burdens regarding the compliance requirements related to the *November 10 Intermodal Order*. In addition, the Petitioners also respectfully submit that it is technically infeasible for the Petitioners to comply fully with the apparent requirements of the FCC with respect to routing and rating of calls to ported numbers.

¹⁸ See *November 10 Intermodal Order* at paras. 39-40

As the TRA is aware, the service and operational characteristics of the Independents are distinct from the larger carriers that predominantly serve the top 100 MSAs. It is these very differences that formed the foundation for Congress granting the TRA authority to determine whether the deployment of number portability, or any Section 251(b) or (c) interconnection requirement, is in the overall public interest in the service areas of the Petitioners. Distinctions between the Independents and the larger carriers exist with respect to the network arrangements that are currently in place with wireless carriers. These distinctions render it technically infeasible for the Independents to comply generally with the rating and routing requirements established by the *November 10 Intermodal Order*.

Specifically, the *Order* requires that

calls to the ported number will continue to be rated in the same fashion as they were prior to the port. As to the routing of calls to ported numbers, it should be no different than if the wireless carrier had assigned the customer a new number rated to that rate center.¹⁹

The quote reflects an apparent assumption that the FCC has made that somehow a wireless carrier may have a right to "associate" a number with a rate center and thereby automatically ensure that calls to that number will be treated by an originating LEC as a "local exchange service" call. While the FCC's assumption may or may not be correct in the areas served by larger carriers that have deployed network facilities throughout a LATA or region, this assumption is most definitely not correct with respect to the Petitioners.

Neither interconnection between two carriers nor the establishment of an Extended Area Service (EAS) route between two carriers occurs automatically. Interconnection occurs within the framework of Section 251 of the Act and is initiated by a request of one carrier to another.

¹⁹ *Id* at para. 28

Similarly, the establishment of an EAS route does not occur in the absence of negotiation and agreement regarding the exchange of traffic between the two carriers.

Irrespective of the factual assumptions implicit in the *November 10 Intermodal Order*, however, the fact is that if a call is ported to a wireless carrier that has no established interconnection arrangement with an Independent, the "calls to the ported number" cannot be rated "in the same fashion as they were prior to the port." In the absence of an established interconnection arrangement with a wireless carrier, calls from wireline carriers to the network of the wireless carrier are generally carried by the originating end user's choice of toll carrier or interexchange carrier.

Where the *November 10 Intermodal Order* directs wireline carriers to route "calls to ported numbers . . . no different than if the wireless carrier had assigned the customer a new number rated to that rate center,"²⁰ the routing will be to the originating wireline customer's chosen toll or interexchange carrier in those instances where a wireless carrier has failed to establish an interconnection arrangement with the wireline carrier pursuant to Section 251 of the Act. Under these circumstances, the Petitioners are unable to comply with the requirement of the *Order* to rate calls to the ported number "in the same fashion as they were prior to the port." The rating is performed by the originating customer's toll or interexchange service provider.

Petitioners are also concerned by the *November 10 Intermodal Order's* disregard for the specific operational and network characteristics of the factual realities of the existing exchange of traffic between the Independents and wireless carriers. Contrary to the FCC's apparent factual misunderstanding, the Independents, and other similarly situated carriers throughout the nation, do not provide local exchange services that involve transport responsibility or network

²⁰ *Id* at para 28

functions beyond their own networks within their respective service areas. This fact is in stark contrast to the networks of the Bell Operating Companies ("BOCs"). Unlike the BOCs that transport traffic throughout a LATA over their established network facilities, the interconnection obligations and technical capabilities of the Independents are limited to their local exchange networks that are geographically limited by the bounds of their incumbent service territory. Telecommunications services provided to end users which involve transport responsibility to interconnection with the networks of other carriers at points beyond an Independent's service area network are provided by toll or interexchange carriers, and not by the Independent.

The toll or interexchange carrier chosen by the end user customer is responsible for the transport and network functions for the transmission of the calls destined to points beyond the network of the Coalition member. The toll or interexchange carrier "carries" the call to its destination for termination to the called party, generally utilizing the switched interconnection and termination services of the carrier serving the customer on the other end of the call. Accordingly, calls that are originated by customers of Coalition members and destined to network interconnection points beyond the network of the Coalition member are both "routed" and "rated" by the customer's chosen toll or interexchange carrier which, in fact, is the service provider for such calls. The functional involvement of the Coalition member with respect to such calls is limited to the provision of interexchange access services on an equal basis to interexchange carriers that compete to provide interexchange services to the end user.

To the extent that the FCC has contemplated or assumed the existence of some other treatment of calls to numbers ported from a wireline carrier to a wireless carrier where the wireless carrier has no interconnection point established on the network of a Coalition member, appropriate procedures and processes must be undertaken to examine a complex set of issues

regarding which carriers will transport the traffic to a point beyond the network of the Coalition member and what the terms for such transport will be. Any such contemplated or assumed alternative arrangement cannot be implemented in the absence of a thorough consideration of the issues, and the determination of rational mechanisms to route a call to a point of interconnection beyond the physical location of the original rate center and physical network facilities of the Coalition member within the local exchange service area in which the number was formerly used at a specific location. Until these network arrangements are established by a wireless carrier, porting a number to that wireless carrier and treating calls to that number as "local" is not technically feasible.

The concerns presented by this set of circumstances reach beyond questions of technical feasibility. Existing technical limitations and the related issues regarding responsibility for call routing identified by the FCC, but left unresolved, raise concerns regarding potential resulting customer confusion and disappointment. Because these issues have not been addressed, the wireline to wireless porting of numbers in the Independent service areas will lead to non-completed calls and inevitably result in customer confusion and dissatisfaction with all carriers and federal and state regulators.²¹ The industry, the TRA, and *most significantly the consumers* will be subjected to undue burdens while they struggle with the consequences of the implementation of the technical aspects and ramifications of the *November 10 Intermodal Order* because these issues remain unaddressed by the FCC. The Petitioners respectfully submit that the FCC's technical requirements for intermodal portability are technically infeasible and, accordingly, grant of the requested suspension is warranted and in the public interest.

²¹ These concerns, in fact, reach beyond the issue of whether calls to ported numbers can be rated and routed as "local calls." The Petitioners respectfully submit that there is no certainty that when a customer ports a number to a wireless carrier, the customer will be able to receive e911 services to the same extent that this service is available to the customer at the location where the customer used the number when it was associated with wireline service

V. The Public Interest will be Served by Grant of the Requested Suspension.

As demonstrated above, implementation of the number portability required by the *November 10 Intermodal Order* in the service areas of the Independents will: 1) result in significant economic harm for users of telecommunications services in general; 2) impose requirements that are unduly economically burdensome; and (3) impose requirements that are technically infeasible. In the absence of the requested suspension, the Petitioners will be subjected to technically infeasible compliance deadlines and possible enforcement actions.

Petitioners will also be required to invest limited resources into potentially unnecessary efforts to comply with technical aspects of the *November 10 Intermodal Order* that are subject to a request for an emergency appeal. Until finality with that appeal is reached, the TRA should suspend the LNP obligations of Petitioners. Under these circumstances, the Petitioners respectfully submit that it is entirely appropriate for the TRA to avail itself of the opportunity contemplated by Congress for the TRA to exercise its judgment in determining that the requested suspension is consistent with the public interest, convenience and necessity within the service areas of the Petitioners.

To this end, the Petitioners respectfully submit that the interests of all parties will be better served by ensuring that the deployment of number portability in the rural areas of the State is suspended until it can be achieved in a thoughtful manner that does not harm consumers or disregard the very real operational and network issues that must be addressed prior to the implementation of porting. True consumer benefit from LNP can be achieved only if the porting process will actually work in a manner that will meet consumer expectations and public safety needs. The implementation and network challenges associated with LNP in the rural areas served by the Independents is real and should be addressed in the public interest. Accordingly,

grant of the requested suspension in the areas served by the Petitioners will serve the overall and balanced consideration of the public interest.

VI. Conclusion

Consideration and grant of the requested suspension by the TRA is consistent with the rights and duties entrusted to it by Congress to ensure that the balanced and overall interests of the consumers located in the service areas of the Petitioners are served. Accordingly, and for the reasons set forth above, the Petitioners respectfully request that the TRA grant this Petition for a suspension of the § 251(b) LNP requirements, and, first, issue a suspension pending this proceeding and, second, issue a further suspension until the later of (1) the dates for each Petitioner listed on Attachment A as their projected date for LNP technical capacity, (2) six months after the date by which the *Intermodal Orders* are no longer subject to appeal, and (3) six months after the date by which the TRA has provided direction to the Petitioners on the rating and routing issues raised in this Petition and in the pending CMRS Arbitration docket.

Respectfully Submitted,
The Tennessee Coalition of
Incumbent Rural Telephone
Companies and Cooperatives

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served via hand delivery or facsimile on March 24, 2004, upon:

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Attachment A

<u>The Tennessee Coalition of Incumbent Rural Telephone Companies and Cooperatives</u>	<u>Projected Date of LNP Technical Capacity</u>
Ardmore Telephone Company, Inc.	11/24/04
Ben Lomand Rural Telephone Cooperative, Inc.	5/24/04
Bledsoe Telephone Cooperative	12/31/04
CenturyTel of Adamsville, Inc	9/2/04
CenturyTel of Claiborne, Inc.	9/2/04
CenturyTel of Ooltewah-Collegedale, Inc.	9/2/04
Crockett Telephone Company, Inc.	12/31/04
Dekalb Telephone Cooperative, Inc.	10/31/04
Highland Telephone Cooperative, Inc.	8/24/04
Humphreys County Telephone Company	10/11/04
Loretto Telephone Company, Inc.	8/1/04
Millington Telephone Company	11/15/04
North Central Telephone Cooperative, Inc.	11/24/04
Peoples Telephone Company	12/31/04
Tellico Telephone Company, Inc.	Tellico & Englewood - 4/19/04 Vonore - 4/26/04
Tennessee Telephone Company ²²	LaVergne, Mt. Juliet & Halls already capable Parsons & Waynesboro - 7/05/04 Collinwood - 8/30/04 Cornersville - 9/27/04
Twin Lakes Telephone Cooperative Corporation	5/24/04
United Telephone Company	5/24/04
West Tennessee Telephone Company, Inc.	12/31/04
Yorkville Telephone Cooperative	5/24/04

²² Tennessee Telephone Exchanges: Bruceton, Clifton, Collingwood, Cornersville, Darden, Decaturville, Linden, Lobelville, Parsons, Sardis, Scotts Hill, Waynesboro